Dayton Electroplate, Inc. *and* Teamsters Local Union No. 957, International Brotherhood of Teamsters, AFL–CIO.[1] Case 9–CA–27587

September 29, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On April 23, 1992, Administrative Law Judge Donald R. Holley issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Dayton Electroplate, Inc., Dayton, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The name of the Charging Party has been changed to reflect the new official name of the International Union.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] In concluding that the Respondent bargained in bad faith, we rely, in particular, on (1) the judge's findings that the Respondent offered no explanation for its decision to renege on its prior agreements concerning noneconomic matters when it made and implemented the regressive May 22 bargaining proposals; and (2) the Respondent's conduct away from the bargaining table, including statements made during a supervisors' meeting and its promises of favorable treatment of the maintenance employees who supported the April 6 contract proposals. These factors are inconsistent with an intent to bargain in good faith.

Deborah Jacobson, Esq., for the General Counsel.
John W. Slagle, Esq., of Dayton, Ohio, for the Respondent.
John R. Doll, Esq. (Logothetis and Pence), of Dayton, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge. Upon an original charge filed by the captioned Union on June 7, 1990,[1] the Acting Regional Director for Region 9 of the National Labor Relations Board issued a complaint on November 28 which alleged, in substance, that Dayton Electroplate, Inc. (Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act by making regressive bargaining proposals to the Union on May 22 and by implementing its May 22 contract proposal on June 1 without having reached a valid good-faith impasse with the Union. Respondent filed timely answer denying that it had engaged in the unfair labor practices alleged in the complaint.

The case was heard in Dayton, Ohio, on April 10 and 11, 1991. All parties appeared and were afforded full opportunity to participate. Upon the entire record, including consideration of posthearing briefs filed by the parties, and from my observation of the demeanor of the witnesses who appeared to give testimony, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is an Ohio corporation with its principal office and place of business located in Dayton, Ohio. It is engaged in the business of contract electroplating metal parts/assemblies for other business entities. During the 12-month period preceding issuance of the complaint herein, it provided services valued in excess of $50,000 for Ford Motor Company, an enterprise directly engaged in interstate commerce. It is admitted, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. STATUS OF LABOR ORGANIZATION

It is admitted, and I find, that General Truck Drivers, Chauffeurs, Warehousemen and Helpers Local Union No. 947, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Dayton Electroplate, Inc. commenced business on June 1, 1984, after Charles Borum, Respondent's president and sole shareholder, purchased certain assets and liabilities of a partnership known as Dayton Rustproof. At the time of the transaction, the Union represented Dayton Rustproof's production and maintenance employees, and Respondent continued to recognize the Union as the exclusive collective-bargaining agent of the employees. That recognition is embodied in successive collective-bargaining contracts, the most recent of which was effective during the period June 1, 1987, to June 1, 1990.[2]

[1] All dates herein are 1990 unless otherwise indicated.

[2] The bargaining unit admitted to be appropriate within the meaning of Sec. 9(b) of the Act is:

> All full-time and regular part-time production and maintenance employees and all warehouse employees employed by [Respondent/Employer] at its Dayton, Ohio, operations and facilities within Local 957's jurisdiction, not to exceed twenty-five air miles from the center of Dayton, Ohio, presently located at 1030 Valley Street, Dayton, Ohio, but excluding all office clerical employees, guards, professional employees, and supervisors, as defined in the National Labor Relations Act, as amended,

Respondent's business consists of plating various items for customers who are involved principally in the automotive and appliance industries. During the period under consideration in the instant case, its major customers were Roll Formed Products Company (Roll Formed), Harrison Radiator Division of General Motors Corporation (Harrison), and Ford Electronics and Refrigeration Corporation (Ford). Borum indicated during his testimony that Roll Formed, Ford, and to a lesser degree, Harrison,[3] are all disciples of the ''just-in-time'' inventory management philosophy. Thus, those entities deliver items to Respondent for plating, accept delivery of the plated items after they have been plated, and immediately use the plated items to construct a product. He further indicated that Respondent is the sole concern which plates certain items for the above named, and other customers, and that the arrangement is referred to as a single-source situation.

While Respondent's 1987–1990 collective-bargaining contract with the Union was not to expire until June 1, 1990, in early November 1989, Charles Borum met with John Buzard, business representative of the Union, and offered yearly pay increases and continuation of all other contractual provisions (except dates) if the Union would enter a new contract effective from October 1, 1989, to September 30, 1992. He thereafter documented his offer by letter to Buzard dated November 9, 1989 (G.C. Exh. 3).[4] The proposed contract was presented to bargaining unit members, and they rejected it.

On March 27, 1990, the parties commenced negotiations for a contract which was to replace the subsisting agreement due to expire on June 1. At the first negotiation session, the Union presented Respondent with its contract proposals. Charles and Paul Borum (Respondent's V-P, operations) represented Respondent, and Buzard and an employee bargaining committee represented the Union. No agreements were reached.

Sometime prior to March 30, 1990, Dennis Hughes, certified public accountant, the auditor designated by the Union, audited the financial records of the Respondent. On March 30, 1990, he submitted a report summarizing his findings which indicated that such findings were based on ''data for the nearly six years the company has operated.'' In his report to the Union, Hughes, inter alia, stated (G.C. Exh. 6):

> Mr. Borum and the controller, Mr. Trentman, were both very helpful and cooperative during the discussions following my review. Mr. Borum indicated that the company had suffered several set-backs. These included the loss of a $120,000 lawsuit in 1989 which resulted from the receipt of faulty materials. He also alluded to the fact that the company is still recovering from the huge investment in pollution control facilities that the company was forced to install several years ago. In addition, he pointed out that his competitive situation is as intense as ever.
>
> The financial information which I think is relevant to the situation you and your members are considering is as follows. The company's income tax returns show total losses amounting to approximately $1.3 million for the first five and one half years of operations. The amount of loss sustained for financial accounting purposes is approximately $600,000 less. This results from the fact that substantial amounts of equipment are being written off faster for tax purposes than for book purposes. The company's sales have varied substantially ranging from a low of $2.6 million in 1986 to a high of $3.7 million in 1988. The cost of goods manufactured and operating expense percentages over the entire period have remained very consistent. This has led me to conclude that the information I saw was very representative of the company's results of operations.
>
> To summarize, I feel this company is not without problems but its prospects are much brighter than the tax returns indicate. The company appears to be well managed and I have been impressed in talking with Mr. Borum. Labor costs are a substantial part of their total costs and careful management of this amount is certainly in the best interests of the company. The company has held the line on virtually all other expenses. I believe they are on the verge of becoming profitable and if enough sales can be generated, they can become substantially profitable. It is this scenario that makes the decisions by your membership so difficult.

Buzard shared the auditor's report with the membership of the Union.

The same persons met on April 2 and 3. Notes taken during the sessions by Buzard and Paul Borum were placed in the record as General Counsel's Exhibits 4 and 5, respectively. The notes reflect, inter alia, that Respondent's spokesman emphasized that customers such as Ford, GM, and Roll Formed were urging the Company to have its labor contract renewed well before the expiration date to avoid disruption in supply. Respondent proposed that a new agreement be ratified no later than April 15 to avoid a situation wherein their customers would refrain from shopping for new suppliers. It was agreed that noneconomic matters would be settled before economic issues were discussed. The parties reviewed the Union's proposed contract, and a number of items were agreed upon.

Paul Borum credibly testified that all noneconomic issues were resolved shortly after April 3, and the parties next met on April 5 and 6. The Union proposed wage increases which it estimated would cost the Company $123,000 over 3 years. Respondent initially countered by offering lump sums of $400 in 1990 and 1991, 30 cents across-the-board increase in the third year, wage reopener at the end of the third year, all based on a 5-year contract. After further negotiation, it increased the lum sum to $500 in the first 2 years and the third year across-the-board to 40 cents. Bargaining unit employees voted on the April 6 offer and rejected it.

Irene Gier, an employee on the negotiating committee, was questioned by Respondent's vice president, Paul Borum, when she returned to work after the April 8 ratification vote. Borum asked Gier and Keith Mills, the chief steward, about the results of the vote. When Gier told him it was ''20 no's and 3 yes's,'' Borum asked who voted ''yes.'' Although Gier

---

constituting the bargaining unit as certified by the National Labor Relations Board on January 27, 1975, in case No. 9-RC-10879.

[3] Harrison maintains a parts inventory to some extent.

[4] The letter indicated, inter alia, Respondent needed stable labor relations to enable it to obtain new business and to retain its existing customers.

insisted she could not disclose that information, Borum repeatedly questioned her and asked if it was the three committee members who had voted yes.

The next negotiation session was held on April 11. Company spokesmen noted that Ford and Harrison were looking for new suppliers to do their work, and that Roll Formed moved one-third of their work out when the last contract was settled a week after expiration. The parties agreed they should next meet with a Federal mediator.

The parties met with Federal mediator David Brodar from April 17 foreward. During the first meeting, they explained their positions. During the April 19 meeting, the parties discussed working conditions in the plant and insurance. The Union's proposal for creation of a safety committee was agreed upon, and the Company agreed to assist employees who filed insurance claims.

On April 23, the parties met once again with the Federal mediator. Buzard failed to indicate what occurred during the meeting, but he recalled that the safety committee and insurance were topics which were discussed.

On April 27, bargaining unit employees again voted on the April 5–6 proposal made by Respondent. The employees rejected the proposal.

By letter dated April 30, Respondent notified the Union that it was withdrawing all ''offers, understandings and agreements'' which resulted from negotiations that commenced on March 27, 1990. It explained its action stating (G.C. Exh. 7):

> The withdrawal of any and all offers, understandings or agreements is the result of the contract not being *timely ratified* which has jeopardized the Company's business relations and contracts with its customers and has compounded the Company's serious financial condition. The need for *early ratification* has been throughout the negotiations, of paramount importance as you know.

In mid-May, Respondent sent the Union copies of letters which it had solicited from Roll Formed, Harrison and Ford. The letters, which were placed in the record as General Counsel's Exhibit 8 indicate that the named customers were concerned over Respondent's labor contract and their need for an uninterrupted supply of parts. Roll Formed and Harrison requested that they be kept advised to enable them to seek alternate means of supply if necessary, and Ford indicated it was taking immediate steps to obtain other sources of supply.[5]

The next bargaining session was held on May 22, 9 days before the contract was to expire. During the session, Respondent presented the Union with a new contract proposal which provoked the instant litigation. The proposal was placed in the record as General Counsel's Exhibit 9, and proposed, inter alia: (1) That all official union business posted on the bulletin board must be submitted to the vice president of Operations before posting; (2) that overtime for time worked in excess of 8 hours in a day be eliminated; (3) that notice of assignments of work beyond an employee's normal shift was to be reduced from 4 to 2 hours; (4) that the probationary period for new employees was to be 180 days, rather than 60 days; (5) that employees with 20 years of seniority would receive 3 weeks of vacation, rather than 4 weeks; (6) That the day after Thanksgiving would be a paid holiday, but employee's birthdays would not be a paid holiday; (7) that grandchildren would be added to the funeral leave provision; (8) that group insurance was to be deleted from the contract; (9) that probationary employees would be paid 50 percent of the classified job rate at hire, rather than 30 cents less and that they be paid 25 cents less than the classification rate after 90 days; (10) that the contract term would be 5 years, with wage reopener after 3 years; and (11) that the wages of all employees other than maintenance employees would be reduced by approximately 11.3 percent and frozen for 3 years.[6] Buzard credibly testified that the elimination of overtime after 8 hours, Company approval of union notices, the change in the birthday holiday, and alteration of the probationary period had not been discussed in earlier negotiations.

When presenting its proposal, Respondent indicated it was the best they had to offer but it was not necessarily a final offer.

On either May 23 or 24, Respondent advised the Union that if it would ''pre ratify'' the April 6 tentative agreement and submit it back to Respondent before noon on May 24, the Respondent would accept that proposal. A vote was conducted and the employees rejected the April 6 tentative agreement by a vote of 25 to 7.

By letter dated May 24, Respondent advised the Union as follows (G.C. Exh. 11):

> Please accept this letter as a response to you letter dated May 24, 1990, in which you advised that the Company's April 5, 1990, Proposal was rejected by vote taken on May 24, 1990, by the employees in the unit represented by Teamsters Local Union No. 957 here at Dayton Electroplate.
>
> Technically, our April 5, 1990, Proposal was not on the table. Because one major customer had given us until Noon today to bring our negotiations to closure before it started to pull work out of the Plant, we did indicate through the Federal Mediator to you that if Teamsters Local Union No. 957 would make the April 5, 1990, Proposal as a pre-ratified counter proposal back to us before NOON today, we would accept it. Since no such pre-ratification was received, we are back to the status before the discussions which took place on May 23, 1990, which prompted your meeting this morning.

[5] General Counsel witness George Steele testified that he asked Paul Borum if the Company was really going to lose the business of the companies that sent the letters. He claims Borum replied: ''It was nice to have friends in the right places at the right times.'' Paul Borum denied he made the statement. Charles Borum admitted he solicited letters so he could bring the need for early agreement to the attention of the bargaining committee. I credit Steele.

[6] Maintenance man and maintenance helper were to receive their then-current hourly rate for 3 years.

During our meeting on May 22, 1990, we submitted a formal Proposal based on the anticipated loss of business we know is about to occur (Ford, GM and Roll Form), and the loss of business which has already occurred (Roll Form), because we have not been able to satisfactorily conclude negotiations. As you know, and as your auditors have already verified, our operations are not now profitable. The loss of the business we have and the customers who have provided us with this business obviously represents a very significant adverse impact on our already bad financial condition. In appreciation of this impact, on May 22, 1990, we submitted a Proposal to you which reflected this changed economic situation. In essence, the economic changes reflected by this new Proposal called for a wage reduction of approximately 11.3% for our Production employees with a three (3) year wage freeze thereafter, and a wage freeze for three (3) years for the Skilled classifications. In addition, we proposed that we no longer provide life, AD&D or health insurance. This represents a $2.00 per hour (approximately) reduction in our wage/benefit cost.

In our meeting on May 22, 1990, you asked if this new Proposal was our ''best and final'' offer in light of the change in circumstances. Mr. Harrington, our spokesman, told you that this was the ''best' the Company could offer because of the anticipated loss of business, but did not indicate it was final. Obviously, is is not final; but, it does represent our best thinking on a way to make operations profitable and to accomplish the financial relief—approximately $2.00 per hour reduction—we believe is necessary to accomplish this objective. But, if you have a better idea which accomplishes the same economic relief, we certainly want to know of it and consider it.

Mr. Harrington has been in contact with the Federal Mediator and a meeting will be set up for Wednesday of next week at 9:00 A.M in the Mediator's office. As I understand our situation with our customers, that is too late to save the work we will be losing because of our uncertain situation. And, in that regard, I have told those customers that you have indicated that will not have a strike and that even if we do have a work interruption, we will continue to be able to meet their production needs. But, this is not enough assurance for them because of their JIT (Just In Time) program. They might keep using us as they phase in someone else; but, this is a short-time rather than a long-time situation. Obviously, we are just as perplexed as you are with this situation. We appreciate the efforts you have made because you understand and appreciate our very bad economic situation. We wish that the employees had this same understanding but it seems that they don't understand it because they can't accept it, not because it has not been presented to them.

We will continue to negotiate in an effort to reach agreement. And again, if you have any suggestions - now, tomorrow or whenever—call me. Anything you have to suggest to resolve this will be considered.

On May 24, Respondent posted the following ''Notice'' to employees on its bulletin board (G.C. Exh. 12):

NOTICE

To All Employees:

Posted with this notice is a copy of the letter that we received today from John Buzard.

The current collective bargaining agreement is in effect ''until June 1, 1990,'' thus it terminates at midnight May 31—June 1, 1990 and is not in effect on Friday, June 1, 1990.

In recent weeks we have tried to keep you all fully informed concerning our position with our major customers—Ford, Harrison and Roll Formed. We have been up front with you. We did not make up the demands that these customers have put on the Company. Because of their ''Just In time'' (J.I.T.) program they each must be assured of uninterrupted production from us and are totally unwilling to accept *any* risk of interruption of our work to them.

We have made the *best* offer we could make—an offer that we believe is much more than we could afford given the Company's financial condition—*which your auditors have verified*—and an offer which was conditioned on our keeping the customers that we now have.

Because we have now lost work and will continue to lose work—and Ford has left no doubt that once it is out of here we will *never* get it back—our economic situation is worse today than it was and we cannot continue to make the offer which we made on April 5, 1990.

It is our understanding that you have been instructed not to strike and to work as usual on June 1, 1990. That is your right. Also, in that regard we assure you that we will not engage in any ''lock out.''

We will be meeting with your representative to continue to negotiate.

/s/ Charles J. Borum
President

The parties next met with the Federal mediator on May 30. they discussed ways Respondent could get or retain business, and Respondent offered to permit employees to continue their health insurance coverage by having all the premiums deducted from their pay, or by substituting a larger wage cut for insurance. No agreement was reached. Respondent indicated it intended to implement its last proposal, and the Union indicated the employees would continue to work. Charles Borum and his son Paul both claimed the Federal mediator commented during the session that it appeared the parties were at impasse. As Union Representative Buzard did not deny the assertions, I credit them.

By letter to the Union dated May 31, Respondent indicated it would implement its last offer on June 1. The letter was placed in evidence as General Counsel's Exhibit 13 and states:

> Based on the negotiations which took place yesterday in the offices of the Federal Mediation and Conciliation Service and the information which has been conveyed to us since that meeting both from you directly and from the Federal Mediator, we have concluded that an impasse in our current negotiations exists.
>
> Because this impasse exists and because of: (1) our poor economic position, as verified by your auditors; (2) the actions of our customers in cutting back work; and (3) our need to take action immediately in the hope that we will be able to survive, we have determined to implement the ''last offer'' which we made to you yesterday, a copy of which is enclosed. This last offer will be implemented at 12:00 Midnight tonight.
>
> Briefly outlined, this ''last offer is as follows:
>
> (1) New five (5) year Collective Bargaining Agreement with wages fixed for a three (3) year period and a wage reopener for the fourth and fifth year;
>
> (2) The new Collective Bargaining Agreement contains the same provisions as contained in our current Agreement except:
>
> (A) Article II, Section 3, is deleted—this is the ''successors and assigns'' clause;
>
> (B) Article V, Section 1, is changed to require submission of notices to be posted by the Union on the Company bulletin board to the Vice President of Operations before posting;
>
> (C) Article IX, Section 3, is changed to eliminate daily overtime, as such, and to pay overtime on a weekly - over forty (40) hours—basis only;
>
> (D) Article IX, Section 6, is changed to require only two (2) hours' notice of required working of overtime;
>
> (E) Article X, Section 1, is changed to provide for a 180 calendar day probationary period;
>
> (F) Article XIV, Section 1 and Section 2, are changed to eliminate the fourth (4th) week of vacation;
>
> (G) Article IV, Section i, is changed to replace the ''Birthday'' holiday with the ''Friday after Thanksgiving'' as a holiday;
>
> (H) Article XVI, Section 2, is changed to add grandchildren to the definition of immediate family for funeral leave;
>
> (I) Article XIX, Section 2, is changed to permit payment of a rate of Fifty Cent ($.50) below the established rate for a classification for the first ninety (90) days of work, and Twenty-five Cents ($.25) below the established rate for the remainder of the employee's probationary period;
>
> (J) Appendix A is changed to provide for the following wage rates and job classifications:

	RATES OF PAY		
	6/01/90	*6/01/91*	*6/01/92*
Leadman	$7.29	$7.29	$7.29
Leadman-Trainee	7.00	7.00	7.00
Maintenance Man	8.69	8.69	8.69
Maintenance Helper	8.16	8.16	8.16
Material Handler Shipping & Receiving	7.19	7.19	7.19
Production	7.00	7.00	7.00
Janitor—A	7.19	7.19	7.19
Janitor—B	7.00	7.00	7.00

> (K) Appendix C is changed to update the language to our current insurance coverage with the St. Elizabeth Insurance Company, provided this coverage continues to be made available, and to require employees who desire this coverage to pay the full cost of the insurance.
>
> While we have taken this action at this time, we continue to recognize our obligation to negotiate in an effort to reach agreement. We will continue to do so. As I indicated to you in my letter of May 24, 1990, and yesterday, if you have any suggestions or ideas on who we can resolve this situation, I want to hear from you.
>
> Very truly yours,
> /s/ Charles J. Borum
> President

The parties met briefly with the Federal mediator on June 20 at the Respondent's request. When the union negotiators were informed Respondent had nothing new to offer, they indicated they were there to respond to any proposals Respondent offered, and as it was making no proposals there was nothing to discuss. Nothing was accomplished at the meeting.

Appearing as a witness for General Counsel, George Steele, a maintenance foreman at Respondent from March 1990 until his termination the day before Thanksgiving 1990, testified that, at about the time the contract expired, he attended a meeting at which the then-existing situation was discussed. He indicated that all the foremen attended the meeting, and Chuck (Charles) and Paul Borum informed them how they should handle situations if the contract was not ratified. The instructions included an admonition that they were not to go to hourly people without having another management person with them to avoid conflicts in event of a confrontation; to keep an eye out for rules infractions, and to write the people up; and to keep a close eye on troublemakers such as Keith Mills, Gary Denning, and a blondheaded girl whose name was, he thought, Jackie. Steele claimed the foremen were told to write up the troublemakers and get them out of there. At some point during the meeting, Steele recalled that Chuck told them: ''I am not trying to break the union, but as many of these people as we can get out of here, the better off, we will be.'' Finally, he claimed

that Chuck Borum told them he was going to teach the Union how to play poker Texas-style.[7]

Steele testified that on another occasion, at or near contract expiration, Chuck and Paul Borum, and supervisor John Schume, approached maintenance employees Bill Abbott and Keith Louts, who had made it known that they favored ratification of the contract, to discuss insurance. He indicated that when the employees asked about their insurance, Chuck thanked them for their loyalty and told them not to worry about it; that he would take care of it, and they would be there long after the other employees were gone.[8]

Respondent sought, through testimony given by Charles Borum, Paul Borum, and its financial advisor Donald Trentman, to show that its financial situation as of May 22, 1990, dictated that it make a regressive economic proposal at that time. Additionally, it offered documentary evidence intended to support its contention.

Trentman, a certified public account who was formerly a partner in Ernest and Ernest, an international accounting firm, is Respondent's vice president, controller. He indicated that during the fall of 1989, he advised Charles Borum to refrain from including an increase in wages in his initial offer to the Union. He stated the reason for his recommendation was that the sales picture was one wherein no trend line of increased sales was shown by the sales experienced prior to that time. To illustrate his point, Respondent placed in evidence as Respondent's Exhibit 8 a statistical study prepared by Trentman from Respondent's financial records. The exhibit reveals, inter alia: that for the year 1989 the dollar amount of monthly sales needed to produce a break-even situation was $287,188; that sales during January, March, and May exceeded the break-even amount, while sales during all other months did not; and that total sales for 1989 were $3,143,593, while the break-even figure for 1989 was $3,446,254. For the year 1990, the document reveals, *inter alia*: that the dollar amount of sales per month needed to produce a break-even situation was $195,600; that sales during March, April, May, and August exceeded that amount; and that total sales for 1990 were $2,093,292, while the break-even figure for 1990 was $2,347,198. With specific regard to the first 6 months of 1990, the document reveals Respondent's sales were:

January	$173,984
February	177,430
March	228,047
April	196,733
May	208,236
June	174,493

[7] Charles Borum acknowledged he met with the management team the day before the contract expired. He testified the discussion centered around what management should do in event the employees decided to strike and the possibility that there would be sabotage. He agreed he told those present that they should get another management individual to accompany them if there were problems, and he admitted he asked if any of them had noticed anyone giving ''static'' in the last few days. The only portion of Steele's testimony which he disputed was the claim that he made a remark about playing poker Texas-style. Steele was the more impressive witness and I credit fully his account of the meeting.

[8] Charles and Paul Borum did not refute Steele's version of the described event. Employee Abbott corroborated Steele's version of the incident.

Trentman testified that his statistical study caused him to conclude that during the period September 1989 through December 1990, Respondent's current assets were not sufficient to pay its current liabilities. He indicated that to remain in business during the period, Respondent paid its vendors as late as possible, deferred payment on bank debt, and refrained from paying Charles Borum any salary or dividends.

Charles Borum indicated during his testimony that he ignored Trentman's advice that he not offer a proposed increase in employee wages in negotiations with the Union because he and Respondent management were optimistic during the fall of 1989 that sales volume from existing customers and new customers was going to increase. He testified that while Respondent's operations were not profitable, and he invited the Union to audit its financial records to verify its poor financial condition, and he indicated to Union Business Representative Buzard that early agreement on a new contract would enable Respondent to retain its major customers and obtain new business. He testified that he remained optimistic about the business during the March/April 1990 time frame as the profit picture looked pretty good and their sales volume was picking up. After the Respondent's contract proposal, which included an increase in wages and benefits, was rejected in April, Charles Borum indicated that Lou Collern at Roll Formed started pressing him about Respondent's failure to obtain a ratified contract, and he suggested that Collern document his concern by putting it in a letter. As Ford and Harrison were also carefully monitoring the progress of negotiations, he indicated Respondent also suggested that they document their concerns. As indicated, supra, he transmitted the letters to the Union after he received them.

Paul Borum indicated during his testimony that, commencing in late 1988, he devoted a substantial amount of his time to maintaining a good rapport with existing customers and seeking to obtain new customers. He testified that in late 1989, A. C. Rochester, a division of General Motors, was considering the feasibility of placing its business with Respondent and that he was optimistic about obtaining their business until they sent a delegation to Respondent in the spring of 1990 and learned that Respondent's contract with the Union was due to expire June 1. He claimed the lack of contract continuity became a stumbling block in the negotiations and A. C. Rochester decided to place their work elsewhere. Without indicating when the business was lost, Paul Borum testified that Ford eventually moved some of its business to Slants Plating in Connersville, Indiana, and that Roll Formed moved some of its business to Tri-State Plating.

Charles Borum testified that by May ''it was clear that we were on a serious down-turn in our sales volume,'' and they were seriously concerned about how much business they were going to lose and how fast they were going to lose it.

While Charles Borum was a witness, Respondent placed certain documentary evidence in the record to support its contention that its operations have not been profitable, and to show that its economic situation worsened around the time it made its May 22 proposal to the Union.

The first document offered was Respondent's Exhibit 1, which reveals Respondent's sales and profit and/or loss dur-

ing the years 1985 through 1990. The document reveals the following:

	Sales	*Profit or Loss*
1985	3,105,494	-101,045
1986	2,817,183	-389,632
1987	2,700,000	-543,000
1988	3,800,000	+ 67,753
1990	2,000,000	-148,000

The second document, Respondent's Exhibit 2, purports to show the actual profit or loss experienced during the period January 1990 through March 1991; the average break-even point during the period January 1988 through March 1991; and the monthly average profit or loss for calendar years 1988 and 1990. Other than showing that 1988 was a profitable year, while 1989 was not a profitable year, the document depicts losses in January and February 1990, a profit in March and April, losses in May, June, and July, a slight profit in August, losses in September and October, a profit in November, and a significant loss in December. While the document depicts a gradual upturn from January to March, profitable operation during March and April, and a downturn after April until profitable operations are realized again in August, I note that Respondent's Exhibit 8 reveals that the monthly break-even sales during 1990 were $195,600 and the sales during March, April, and May 1990 were $228,047, $196,733 and $208,236, respectively. Obviously, something other than insufficient sales caused Respondent to operate at a loss during May 1990. In the circumstances described, I accord little weight to Respondent's Exhibit 2.

The third grouping of documents placed in the record through Charles Borum are marked Respondent's Exhibits 3(a), (b), and (c). The documents depict total labor hours, which include production labor, temporary labor, and indirect labors for the period June 18, 1989, through March 16, 1991. Respondent's Exhibits 3(a) and (b) reveal that production labor increased gradually from January 1990 until mid-March, and it gradually declined thereafter through mid-June. During the same period, no temporary labor was used from January through mid-March, but a significant amount of temporary labor was used from mid-March through mid-June. Charles Borum indicated the exhibit was prepared to show a marked decline in labor hours after mid-April.

In her brief, counsel for General Counsel added total labor used during the period December 16 through May 26, 1989. Her diagram reveals a steady increase in total labor hours in 1990 until it peaked at almost 2000 hours in mid-March, dropped thereafter to about 1300 hours by April 14, rose to 1600 hours by late April, and remained above 1400 hours through May 26.

Respondent placed its exhibits (R. Exhs. 5 and 6) in the record to show that while Roll Formed sent it slightly more than 300,000 parts to be plated during the May–July period in 1989, it sent it slightly less than 300,000 parts in May 1990, about 175,000 in June, and the number sent it for plating by July had dropped to approximately 125,000.

Month	*Number of Parts Produced for Harrison*	*Number of Parts Produced for Ford*
January 1990	418,424	77,119
February 1990	262,313	79,086
March 1990	496,730	86,986
April 1990	401,662	95,757
May 1990	610,248	103,358
June 1990	549,432	108,998
July 1990	559,656	64,093
August 1990	526,080	138,380

Utilizing Respondent's daily production reports (G.C. Exh. 16), counsel for General Counsel demonstrated in her brief (p. 11) that Respondent enjoyed a steady increase in the business it did with Harrison and Ford during the period January through August 1990. My independent review of General Counsel's Exhibit 16 reveals that Respondent continued during the period indicated to produce essentially the same parts for Harrison and Ford during the first 8 months of 1990, and that, as contended by counsel for General Counsel, the total number of parts processed for the named entities during the 8-month period steadily increased.[9]

Discussion and Conclusions

It is well settled that determination as to whether a Respondent has demonstrated adherence to the principles of good-faith bargaining is made by drawing inferences from the conduct of the parties as a whole.'' *NLRB v. Insurance Agents*, 361 U.S. 477, 498 (1960); *Carpenters Local 1780*, 244 NLRB 277, 280–281 (1979). My consideration of the conduct of the parties in the instant case, coupled with the inferences I draw from their conduct, causes me to conclude that Respondent did not adhere to the principles of good-faith bargaining from April 30, 1990, forward.

The facts, supra, leave no doubt that the Respondent bargained in good faith with the Union from November 1989 until it withdraw all ''offers, understandings and agreements'' which resulted from negotiations prior to that time. During the described period, it sought in November 1989 to obtain a ratified agreement by initially offering to increase the wages of employees 16 to 17 cents per hour on December 31, 1989, and September 30, 1990, and 12 to 13 cents on September 29, 1991, if they would ratify an agreement, which otherwise remained the same, by October 1, 1989. Thereafter, during bargaining sessions held between March 27, 1990, and April 6, 1990, tentative agreement was reached by the parties on all noneconomic matters, and Respondent progressively made increased wage offers, which concluded on April 6 with an offer which would increase the wages of employees approximately $10 per week during the first 2 years (1990 and 1991), $16 per week during the third year (1992), with a wage reopener at the end of the third year;

[9] General Counsel's addition of parts produced for Harrison and Ford produced the following:

The record reveals no parts were produced for Ford from July 5 to 16, 1990.

all contingent on agreement that the contract term would be 5 years. As reflected by the record, bargaining unit employees failed to ratify the contract proposals made by Respondent despite the fact that tentative agreement had been reached by the parties on the April 5–6, 1990 proposal.

Respondent's patience with the bargaining unit employees ended on April 27 when they refused to ratify the April 5–6 proposal, as amended by the agreements reached on safety committee and insurance claims filing assistance. As revealed, supra, it withdrew all prior tentative agreements and understandings on April 30, and thereafter presented what must be labeled to be extremely regressive proposals to the Union on May 22. In addition to the fact that it proposed that employees agree to a wage and health insurance provision which would reduce their remuneration by about $80 per week, it reneged on its previous tentative agreement on the union bulletin board provision, that portion of the holiday provision which made the employees' birthday a paid holiday, and the provision which required the Company to give 4 hours notice if an employee was to be given a work assignment after completing his or her regular shift. Respondent offered no explanation for its decision to renege on its prior agreements on the described noneconomic matters, and I find that by proposing regressive changes, it exhibited bad faith. *American Seating Co. of Mississippi*, 424 F.2d 106 (5th Cir. 1970); *General Athletics Products Co*., 327 NLRB 1565, 1574 (1977).

In addition to presenting the Union with noneconomic proposals which constituted action which was inconsistent with a good-faith attempt to reach agreement, Respondent engaged in conduct at or near expiration of the contract which exhibited its displeasure with bargaining unit employers. Thus, as revealed, supra, at a meeting with its supervisors, Respondent management indicated that troublemakers who opposed ratification of the contract such as Keith Mills, Gary Denning, and Jackie _____ should be watched closely and should be written up if they violated company rules so they could get them out of there. During the same meeting, Charles Borum stated, ''I'm not trying to break the Union. But as many of these people as we can get out of here, the better off we will be.'' As indicated, supra, Charles Borum commented during the meeting that he was going to teach the Union to play poker Texas-style. In addition to indicating its animus against employees who had been against ratifying its proposals, Respondent, through Charles Borum and Paul Borum, thanked its maintenance employees, who were known to have favored ratification of the April 5–6 proposals by exempting them from the wage cut imposed on all other employees, informing them they should not worry about their health insurance, promising that ''they would still be there when the other employees were gone,'' and by thanking them for their loyalty. By engaging in the described conduct away from the bargaining table, Respondent engaged in conduct which is inconsistent with an intent to bargain with the Union in good faith at the bargaining table.

I next consider the testimony and evidence offered by Respondent to justify the regressive economic proposals it made on May 22 and implemented on June 1. At the outset, it should be observed that, with exception of calendar year 1988, Respondent demonstrated it has operated at a loss since 1984. Moreover, the facts, supra, clearly reveal that Respondent's major customers were single-source customers who operated on a just-in-time basis and those customers monitored the negotiations closely indicating they would be compelled to take their work elsewhere if Respondent was unable to assure that it could continue to supply the parts they needed. Further, although the record fails to reveal the extent of Respondent's debt, I accept as truthful Trentman's claim that Respondent was able to stay in business by paying interest only on its bank loan, stretching out payment to its vendors, and paying Charles Borum no salary. Each of these facts suggest that Respondent could not afford the pay raises and insurance benefits it had offered employees earlier in the negotiations. Significantly, the Union was aware of Respondent's financial condition because its auditor had received Respondent's financial records during the period when bargaining was occurring.

While Respondent's financial situation was, as contended, bleak on May 22, that situation had existed throughout the negotiations for a contract to replace the subsisting agreement. In agreement with counsel for the General Counsel and counsel for the Charging Party Union, I deem more relevant evidence which would show that Respondent's position changed drastically for the worse on or about the time it took its ''withdrawal'' action on April 30, and the time it made regressive proposals on May 22. Respondent's strongest evidence is that testimony and documentary evidence which reveals that its principal customers were becoming anxious and were evidencing an intent to take their business elsewhere. While the state of its customer relations certainly put pressure on it to obtain a ratified contract, the state of those relations could not arguably support a claim, that a regressive proposal which was considerably worse than the April 5–6 proposal which the employees had rejected would solve the customer relations problem.

I turn next to discussion of poker played Texas-style and the events which occurred during the period May 22 through June 1. As indicated, supra, witness Steele indicated during his testimony that Charles Borum stated during the management meeting which was held immediately prior to the last ratification vote taken by bargaining unit members that he was going to teach the Union how to play poker Texas-style. I have credited Steele's claim that the remark was made although Charles Borum claimed he never heard the expression until Steel gave his testimony. Borum's denial simply does not ring true as Steele would have no reason to fabricate with respect to such a matter, and Paul Borum conceded during his testimony that his father was born and reared in Texas and makes frequent reference to that fact.

As indicated, supra, Charles Borum informed the Union by letter dated May 24 that he had recently accorded bargaining unit employees an opportunity to ''pre-ratify'' its April 5 proposal ''[b]ecause one major customer had given us until noon today to bring our negotiations to closure before it started to pull work of of the Plant.'' The record further reveals that just before presenting employees with the ''pre-ratification'' opportunity, Respondent had made the May 22 regressive proposal. Patently, in the circumstances described, employees were placed on notice when given one more chance to ratify the April 5–6 company proposal that they might well suffer a significant loss of earnings and benefits if they rejected the April 5–6 proposal once more. In fact, they did reject the proposal, thereby calling Respondent's bluff to an extent, but they they apparently decided they

would not strike when the subsisting collective-bargaining expired by its terms at midnight on May 30. Thereafter, as reflected by the record, Respondent informed the Union at their May 30 negotiation session, and subsequently by letter dated May 30, that it was going to implement its May 22 proposal on June 1.

During the hearing in the instant case, Respondent's evidentiary burden was to show that it had adequate reason and justification for making a regressive bargaining proposal on May 22. As indicated, supra, I have found that it failed to give satisfactory explanation for its decision to include regressive noneconomic items in the proposal. I reach a like conclusion regarding the regressive economic proposals for the following reasons.

First, I note that the record reveals that Respondent has failed to establish, as it contends, that its sales were falling in May 1990. As indicated, supra, sales in April were $196,733, or some $1133 higher than Respondent's break-even figure of $195,600. Significantly, May sales were even higher at $208,236. Respondent sought to minimize the fact that the sales during May 1990 were above its break-even point by offering Respondent's Exhibit 2, which purports to show that May was not a profitable month. As many things other than sales are considered to determine whether a profit or a loss was experienced during any given time, and the record fails to reveal what expenses incurred in May 1990 caused Respondent to deem May to be a month in which a loss was experienced, I accord little weight to Respondent's Exhibit 2. Similarly, Respondent's Exhibit 3 purports to indicate that Respondent's labor hours decreased dramatically between mid-March and mid-June 1990. While the data used by Respondent in the preparation of Respondent's Exhibit 3 reveals its labor hours did decrease markedly after June 1, that data reveals that labor hours for April and May were up substantially over the hours worked in January, February and the first half of March, and that the total labor hours worked as of the date of the ''withdrawal'' action on April 30 were approximately 1600 hours, while the total hours worked during the last week of May were about 1400 hours. Interestingly, during the week of April 7, the time at which the April 5–6 offer was made, total labor hours worked were approximately 1500. In the circumstances described, I find Respondent's labor hours exhibit to be unsupportive of its position.

In addition to offering its profit and loss exhibit and its labor hours exhibit, Respondent placed in evidence (R. Exh. 5) a graph which reveals that its parts received and shipped to Roll Formed decreased from highs in May between the 300,000 and 350,000 range to the 175,000 to 200,000 range in June, and on down to the 125,000 to 135,000 range by July. Presumably, the exhibit was offered to show that Roll Formed was the company Respondent made reference to in its May 24 letter to the Union in which it claimed that a major customer had given it until noon on May 24 to achieve a ratified contract. Significantly, Respondent failed to establish during the hearing that Roll Formed or any other customer delivered such an ultimatum to it at or near May 24, 1990. Instead, Paul Borum testified that Respondent continued to plate the same parts for its customers during the period under discussion. While Paul Borum did testify that Roll Formed moved some business to Tri-State Plating, and Ford sent some business to Stants Plating in Connersville, Indiana, he failed to indicate when those events occurred. Moreover, as observed, supra, the record clearly reveals that Respondent plated significantly more parts for Harrison and for Ford in May and June 1990 than it had plated for them in April when it made the April 5–6 proposal to the Union. Finally, I note that examination of General Counsel's Exhibit 16, a record of all parts produced by Respondent on each day during the period January 2, 1990, to August 30, 1990, reveals that on April 2, Respondent produced 20,553 parts for Roll Formed and the part numbers included 154-1, P002, and P003. On June 5, it produced 28,737 parts for Roll Formed, and the part numbers included 154-1, P002, P003, 662-1, and P5. In the circumstances described, I conclude the probability is that Respondent continued to plate those items which it normally plated for Roll Formed during the period extending from April 2 to June 5, 1990.

Having carefully considered the testimony and documentary evidence offered by Respondent to justify and explain its April 30 withdrawal of all prior tentative agreements and understandings, and its regressive contract proposals made on May 22, I find it has failed to offer satisfactory explanation or justification of those actions. Accordingly, I find it acted in bad faith by taking the actions, and it logically follows that there was no legally cognizable impasse when it implemented its May 22 regressive proposals on June 1, 1990. *Pacific Grinding Wheel Co.*, 220 NLRB 1389 (1975); *Carpenters Local 1780*, 244 NLRB 277, 281 (1979).

For the reasons stated, I find that Respondent failed to bargain with the Union in good faith from April 30, 1990, forward in violation of Section 8(a)(5) and (1) of the Act. Moreover, I specifically find that it violated Section 8(a)(5) and (1) of the Act by withdrawing its prior tentative agreements and understandings on April 30, 1990, and that it similarly violated Section 8(a)(5) and (1) of the Act by making regressive contract proposals on May 22, 1990, and implementing those proposals in the absence of an impasse in negotiations on June 1, 1990.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is the exclusive collective-bargaining agent of employees in the following collective-bargaining unit which is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees and all warehouse employees employed by [Respondent/Employer] at its Dayton, Ohio, operations and facilities within Local 957's jurisdiction, not to exceed twenty-five air miles from the center of Dayton, Ohio, presently located at 1030 Valley Street, Dayton, Ohio, but excluding all office clerical employees, guards, professional employees, and supervisors, as defined in the National Labor Relations Act, as amended.

4. By withdrawing from tentative agreements and understandings and by making regressive contract proposals without logical explanation or justification, and by implementing

its last contract proposal in the absence of a valid impasse, Respondent engaged in bad-faith bargaining and it thereby violated Section 8(a)(5) and (1) of the Act.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

Having found that by implementing its last contract proposal in the absence of a valid impasse, thereby unilaterally and unlawfully changing the terms and conditions of its employees in the appropriate unit, I shall recommend that it be ordered to restore the terms and conditions of employment which were in effect on May 30, 1990, and that it make whole its employees for losses which they experienced as a result of its unilateral conduct, with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, Dayton Electroplate, Inc., Dayton, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union by withdrawing from tentative agreements and understandings and by making regressive contract proposals without logical explanation or justification.

(b) Implementing contract proposals which result in unilateral changes in the terms and conditions of employment of bargaining unit employees in the absence of a valid impasse in bargaining.

(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore all terms and conditions of employment to the status quo existing as of May 30, 1990, before the unilateral changes were made, to the extent that such changes were detrimental to the employees.

(b) Make whole employees who were detrimentally affected by the changes in terms and conditions of employment, with interest in the manner set forth in the Remedy.

(c) Preserve and, on request, make available to the Board or its agents for copying, all records and documents necessary to analyze and determine the amount owed to the union funds.

(d) On request, bargain with the Union as the exclusive representative of employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a written agreement:

> All full-time and regular part-time production and maintenance employees and all warehouse employees employed by [Respondent/Employer] at its Dayton, Ohio, operations and facilities within Local 957's jurisdiction, not to exceed twenty-five air miles from the center of Dayton, Ohio, presently located at 1030 Valley Street, Dayton, Ohio, but excluding all office clerical employees, guards, professional employees, and supervisors, as defined in the National Labor Relations Act, as amended.

(e) Post at its facility in Dayton, Ohio, copies of the attached notice marked ''Appendix.''[11] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with the Union by withdrawing from tentative agreements and understandings and by making regressive contract proposals without logical explanation or justification.

WE WILL NOT implement contract proposals which result in unilateral changes in the terms and conditions of employment of bargaining unit employees in the absence of a valid impasse in bargaining.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore all terms and conditions of employment to the status quo existing as of May 30, 1990, before the unilateral changes were made, to the extent that such changes were detrimental to the employees.

WE WILL make whole employees who were detrimentally affected by the changes in terms and conditions of employment, with interest in the manner set forth in the remedy section of this decision.

WE WILL on request, bargain with the Union as the exclusive representative of employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a written agreement:

> All full-time and regular part-time production and maintenance employees and all warehouse employees employed by [Respondent/Employer] at its Dayton, Ohio, operations and facilities within Local 957's jurisdiction, not to exceed twenty-five air miles from the center of Dayton, Ohio, presently located at 1030 Valley Street, Dayton, Ohio, but excluding all office clerical employees, guards, professional employees, and supervisors, as defined in the National Labor Relations Act, as amended.

DAYTON ELECTROPLATE, INC.